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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-220141.2

DATE: December 24, 1985

MATTER OF: Splendid Dry Cleaners

DIGEST:

1. Evaluation factors added to the bids of bidders for a government-owned, contractor-operated (GOCO) laundry facility are not shown to be prejudicial to GOCO bidders where the record shows that both the awardee and the second low bidder were GOCO bidders.
2. Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1982), authorizes the contracting officer "in his discretion" to enter into contracts with the Small Business Administration for subcontracting to 8(a) firms. Accordingly, GAO will not review the agency's decision not to contract under the 8(a) program when there has been no showing of possible fraud or bad faith by government officials or that applicable regulations have been violated.

Splendid Dry Cleaners protests certain alleged improprieties contained in invitation for bids (IFB) No. DABT01-85-B-5001, issued by the Department of the Army for laundry services at Fort Rucker, Alabama. Splendid requests that the solicitation be canceled and that a new solicitation be issued limited to competition by socially and economically disadvantaged small business firms performing the services in government-owned facilities.

We deny the protest.

The solicitation invited bids based on providing the services either in government-owned, contractor-operated (GOCO) facilities or in contractor-owned, contractor-operated (COCO) facilities. Splendid contends that the solicitation overstates the costs the government will incur if award is made on a GOCO basis. These costs are added to GOCO bid prices for evaluation purposes, and this, Splendid argues, favors bids based on using COCO facilities to the extent that no GOCO bidder will be able to win a contract under such a evaluation scheme.

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Bids were opened on August 30, 1985. Although Splendid's protest to this Office was dated August 22, it was not received until after bid opening. Splendid, however, also sent a letter to the contracting officer which was received prior to bid opening. This letter, dated the same day as the protest to this Office, asked for clarification of many portions of the IFB and contended that the evaluation factors were grossly unfair to GOCO bidders. Splendid requested that the IFB be canceled and that a new one be issued restricting the competition to "small minority-owned disadvantaged businesses" that would perform the services in government facilities.

Splendid essentially contends that the evaluation factors added to GOCO bids under the IFB prejudice GOCO bidders because it costs the government the same amount to maintain the GOCO facilities for mobilization as it does when the facilities are used by the laundry contractor. Splendid apparently believes that is improper to add to the GOCO bids any costs other than those exceeding the costs the government would incur if the GOCO facilities were not used. To support its contention, Splendid provides certain GOCO and COCO bid prices for the similar Fiscal Year 1983 procurement which purport to show that the government would have saved \$15,975 if it had added to the GOCO bids only the government's costs exceeding those incurred when the facilities are idle.

We have reviewed the evaluation factors for the previous procurement, and we have not found that they were unreasonable. These factors are similar to the ones complained of for the current solicitation. In any event, the FY 1983 bid prices are irrelevant to the issue that the present solicitation unduly favors COCO bidders since both the awardee and the second low bidder under the present solicitation in fact were GOCO bidders whose bid prices remained low even after the Army applied the evaluation factors to which Splendid now objects. Accordingly, Splendid's protest position that the evaluation factors prejudiced GOCO bidders by overstating the costs to be incurred if the contract were awarded on a GOCO basis is without merit. Cf. Crown Laundry and Cleaners, Inc., 64 Comp. Gen. 179 (1985), 85-1 CPD ¶ 21.

To the extent that Splendid's August 22 letter to the Army asked other questions regarding the conduct of the procurement, the Army's administrative report responds to most of these questions. The report also identifies those remaining questions that can be answered through

information obtained by Splendid under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1982). In this regard, Splendid contends that all of its questions should have been answered prior to bid opening, and the firm requests that action on its protest be deferred for six months to allow sufficient time for it to gather additional facts to rebut the Army's explanations concerning the conduct of the procurement.

Since we know of no requirement that an agency answer all questions asked by a potential bidder prior to bid opening where the IFB apprises all bidders of the government's needs in a reasonable fashion, which is clearly the case here, the fact that the Army did not respond to all of Splendid's concerns prior to bid opening and has not done so now does not constitute a valid basis for protest. Furthermore, a six-month extension of time cannot be granted to Splendid for purposes of obtaining additional information since this would clearly contravene the CICA, which mandates that final decisions on protests to this Office be issued within 90 working days from the date the protest is filed. 31 U.S.C.A. § 3554(a)(1).

With regard to Splendid's request that a new IFB be issued restricted to competition by socially and economically disadvantaged small businesses, the Army states that its Small and Disadvantaged Business Specialist declined to recommend that the procurement be handled in this manner. Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1982), authorizes the Small Business Administration (SBA) to enter into contracts with any government agency with procuring authority and then to subcontract performance of the contracts to socially and economically disadvantaged small businesses. The statute also authorizes the procuring agency's contracting officer to award contracts to SBA "in his discretion." Welbilt Electronic Die Corp., B-210289, Feb. 1, 1983, 83-1 CPD ¶ 114. In the light of the broad discretion given to contracting officers, we do not review decisions not to contract under the 8(a) program unless there is a showing of possible fraud or bad faith on the part of the government officials or that specific regulations have been violated. Id. Splendid has not shown possible fraud or bad faith here and has identified no applicable regulations that may have been violated. Thus, we have no basis to question the Army's decision not to effect an 8(a) procurement for these services. Cf. M&M Fuel Co., B-215472, Aug. 2, 1984, 84-2 CPD ¶ 147 (review of agency's decision to contract under 8(a) program because of specific allegation that SBA regulations were violated).

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Splendid also requests that it be reimbursed the expenses incurred in preparation of the bid which it ultimately did not submit for this procurement and also for the bids it submitted in previous years in unsuccessful attempts to obtain a laundry contract at Fort Rucker. Since it has not been shown that the Army violated any applicable procurement statute or regulations, these costs are not recoverable. See Kavouras, Inc.--Reconsideration, B-219510.2, Aug. 30, 1985, 85-2 CPD ¶ 256.

The protest is denied.

for *Seymour E. Van*
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General Counsel